Lampert & O'Connor, P.C.
1750 K Street NW
Suite 600
Washington, DC 20006

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ORIGINAL

Linda L. Kent
kent@l-olaw.com

Tel 202/887-6230
Fax 202/887-6231

VIA HAND DELIVERY

July 3, 2002

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

EX PARTE

Marlene H. Dortch
Secretary
Federal Communications Commission
The Portals
TW-A325
445 12th Street, S.W.
Washington, D.C. 20554

Re: Oral *Ex Parte* Presentation
CC Docket Nos. 01-337, 02-33

Dear Ms. Dortch:

On July 2, 2002, Steven Teplitz, Vice President and Associate General Counsel, AOL Time Warner Inc. ("AOL"), Donna N. Lampert and the undersigned, both of Lampert & O'Connor, P.C., met with Dan Gonzalez, Senior Legal Advisor to Commissioner Kevin Martin.

In the meeting, we discussed AOL's positions as presented in its Reply Comments in CC Docket 01-337, filed on March 22, 2002 and its Comments and Reply Comments in CC Docket 02-33, filed on May 3, 2002 and July 1, 2002, respectively. Specifically, we discussed today's regulatory, legal, and business framework whereby consumers acquire DSL-based broadband Internet access services from Internet Service Providers ("ISPs") who are, in turn, wholesale ADSL customers of the ILECs. We also explained that since the incumbent local exchange carriers ("ILECs") serve as the primary providers of wholesale high speed transmission services used by ISPs as an input to their broadband Internet access information services, whether the ISP is independent or ILEC-affiliated, there is no basis for the FCC to conclude that the ILECs are non-dominant in the provision of wholesale broadband transmission services. We further explained that because cable operators do not offer transmission services to ISPs, but rather offer an unregulated retail information service to end users, cable modem service offers no basis to alter the current classification of ILEC wholesale broadband services as telecommunications services. In this regard, we stressed that regulatory parity should not be viewed as an end in itself; instead, the Commission should look at the impact on consumers of undermining the highly competitive environment for Internet access services that exists today.

Further, we explained that the ILECs' high speed transmission services used by ISPs have been classified as telecommunications services for sound legal and policy reasons and that

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there is no basis for the FCC to alter this classification at this time. In this regard, we further urged that the FCC reaffirm its conclusions in its *Report to Congress*, 13 FCC Rcd 1150, that ISPs, as information service providers, are not subject to universal service contribution obligations. We also noted that not only is the record devoid of any evidence that ILEC investment has been inhibited, but even assuming such were the case, the FCC must consider *overall* investment, including the investment from the thousands of unaffiliated information service providers that have reasonably relied upon the open regulatory framework to create their businesses. AOL urged that overall investment is best spurred by the FCC's current open framework, predicated on the bedrock principles of the FCC's *Computer Inquiry* precedent. We also discussed the FCC's *Fifth Report and Order* in CC Docket 96-262, regarding access pricing flexibility and emphasized that through this decision, the ILECs already have a clear path to pricing flexibility for ADSL services, consistent with what they are seeking in the above-referenced proceedings. We discussed that some ILECs have already obtained this deregulation, granting them greater pricing freedom while prohibiting discrimination, exclusionary treatment and unreasonable terms and conditions.

Finally, AOL emphasized that the FCC's *Computer Inquiry* framework, designed to ensure that ISPs are able to obtain transmission services from ILECs at just and reasonable rates and on nondiscriminatory terms and conditions, has not been shown to be a burden. In fact, these safeguards do not require a particular rate-setting methodology such as TELRIC, but rather require fair treatment of unaffiliated ISPs as compared with affiliated ISPs. AOL urged that while some updating of this framework may be in the public interest, elimination of the core requirement of access and nondiscriminatory treatment is not.

Pursuant to Section 1.1206(b) (2) of the Commission's Rules, two copies of this Notice are being provided to you for inclusion in the public record in each of the above-captioned proceedings. Should you have any questions, please do not hesitate to contact me.

Sincerely,

Linda L. Kent

Linda L. Kent

cc: Dan Gonzalez